



**SUMMARY OF AND RESPONSE TO PUBLIC COMMENTS
CALIFORNIA AUTOMOBILE ASSIGNED RISK PLAN
PLAN OF OPERATIONS
RH01018405**

COMMENTS RECEIVED PRIOR TO DECEMBER 9, 2003, INITIAL PUBLIC COMMENT DEADLINE:

In response to the Notice of Proposed Action, the Department received comments from:

- California Automobile Assigned Risk Plan
- National Continental Insurance Company
- The Robert Plan
- Mercury Insurance Group/California Automobile Insurance Company

1. California Automobile Assigned Risk Plan (CAARP)

Effective dates should be included in various definitions on pages D-2 and D-3.

Response: Accept this recommendation.

A servicing carrier should be permitted to process claims outside of California.

Response: Accept this recommendation

Review of servicing carrier applicants should focus on positive audit results, rather than the number of audits performed.

Response: Accept this recommendation.

When a servicing carrier withdraws or is terminated, it must submit a claims handling plan, which is reviewed by the Committee and approved by the Commissioner. Language should be added indicating that the Commissioner's approval will not be unreasonably withheld.

Response: Accept this recommendation.

On pages A-20 and A-21, the language currently indicates that dates will be inserted in the final version. Those dates should be January 2005.

Response: Accept this recommendation.

Page A-23 includes an example with dates which are several years old. Those dates should be more current.

Response: Accept this recommendation.

Page A-29 contains a reference to the South Carolina Reinsurance Facility, which no longer exists. The reference should be deleted.

Response: Accept this recommendation.

Page A-30 currently provides that “When the applicant is a Mexican citizen who works in California, the applicable rate shall be that of the location where the applicant works, and otherwise subject to all of the provisions of this Plan.” “Eligible” should be added before “applicant” and “Mexican” should be changed to “foreign.”

Response: Accept this recommendation.

On page A-33, in the “Indemnification” section, delete the sentence “Indemnity shall not be provided for any exemplary or punitive damages, or any fine, penalty, or for any action described in Insurance Code section 533.5.”

Response: Do not adopt this recommendation. The “Indemnification” section addresses indemnification for Committee and subcommittee members. CAARP did not indicate why this sentence should be deleted. California Insurance Code Section 533 provides that an insurer is not liable for defense costs or a loss caused by the willful act of the insured. Section 533.5 provides that no insurance policy shall provide coverage or indemnity for any fine, penalty, or restitution in any criminal action or specified Business and Professions Code violations. It further provides that any attempt to provide such coverage is contrary to public policy and void. No reason is provided why the same rationale should not apply to indemnification.

A start date should be included for Section 22.A.2.

Response: Accept this recommendation.

Section 25.A.2.c currently provides that uninsured motorist protection at limits of \$15,000 per person and \$30,000 per occurrence for bodily injury and \$5,000 for property damage shall be provided. However, \$5,000 is a typographical error and should be changed to \$3,500.

Response: Accept this recommendation. (See summary of and response to public comments received in response to April 14, 2004, Notice of Availability of changed Text.)

Section 28.F. should reference Section 33.A not 33.B.

Response: Accept this recommendation.

The last sentence of Section 37.A.8. provides that commission will be paid in accordance with Section 3. The correct reference is Section 34.

Response: Accept this recommendation.

A start date should be included in Section 40.A.2. on page C-1.

Response: Accept this recommendation.

In Section 43.A.2.c. on page C-8, delete the language “or other requirement of a political subdivision.”

Response: Do not adopt this recommendation. CAARP does not indicate why it believes this language should be deleted. This section provides that commercial vehicles shall be provided coverage in the amounts for which proof of ability to respond in damages or adequate protection against liability is otherwise required by a valid law, ordinance, regulation, or other requirement of a political subdivision. A municipality may, for example, by contract require that an ambulance service meet certain minimum financial responsibility requirements. In that case, if the ambulance service is unable to obtain coverage in the voluntary market, it would be unable to meet the requirements of the municipality. CAARP should provide coverage in the minimum amounts required by a political subdivision, regardless of the manner in which those requirements are imposed by a political subdivision.

Section 43.A.2.c. on page C-8 should read \$3,500, not \$5,000.

Response: Accept this recommendation. (See summary of and response to public comments received in response to April 14, 2004, Notice of Availability of changed Text.)

Section 46.F. on page C-18 should reference Section 51.A, not 51.B.

Response: Accept this recommendation.

Section 47.F. on page C-20 provides that when an additional vehicle and/or coverage is added to a policy, the applicable rates shall be those in effect at the time of the change. For commercial coverages, the “inception date of the policy” is a more workable date.

Response: Accept this recommendation.

In Section 51.A on page C-22, the \$15 minimum premium charge should be changed to \$250 to match the minimum premium charge in Section 51.B.3.

Response: Accept this recommendation.

In Sections 52.A.1 and 2 on page C-23, delete “with the remainder earned pro rata after the first \$25 would have been earned pro rata” to conform to other provisions in this section.

Response: Accept this recommendation.

In Section 54.2.a.(1) on page C-26, CAARP originally recommended that the following sentence be included after the first sentence: “If the insured fails to return the questionnaire, the

servicing carrier shall issue a second request at least 60 days prior to the expiration date of the current policy.” This sentence was not included, but should be.

Response: Accept this recommendation.

In Section 54.A.10 on page C-30, remove the dollar amount (\$10) since this amount can change.

Response: Do not adopt this recommendation. This section currently provides that the servicing carrier may recoup from the insured the \$10 administrative fee for motor carrier filings. This section sets forth the administrative fee that may be charged to process motor carrier filings.

CAARP had general concerns about language requiring the Commissioner’s approval of various actions, since the Commissioner may not act in a timely manner.

Response: Add a new sentence at the end of Section 3.A. as follows: “Whenever this Plan requires the approval of the Commissioner, the Commissioner shall take all reasonable steps to act on the recommendation within 60 days of receipt of a written recommendation from the Committee or the Manager, unless another time period is set forth by law or in this Plan.”

2. National Continental Insurance Company

The changes proposed in Section 11 must come with a prospective effective date to avoid contractual interference with existing servicing carriers.

Response: If the changes proposed in Section 11 are approved, renegotiation will be sought for the existing servicing carrier contracts.

The maximum five-year term in Section 11.B.4. should not be adopted because it will limit a servicing carrier’s willingness to invest in long term improvements..

Response: Do not adopt this recommendation. CAARP’s Advisory Committee has recommended that servicing carrier contracts be reviewed every five years. A servicing carrier may be reappointed for successive terms.

The proposed 18 month standard in Section 41.D.4. conflicts with current policy language which allows for 36 months to audit.

Response: Upon approval of the Plan, revision of the current policy language will be proposed.

Section 54.A.11 and 54.A.15 need to coincide with one another regarding Penalties for Improper Claims Handling.

Response. Accept this recommendation. Section 54.A.11 currently provides that upon confirmation that a servicing carrier has made a loss payment where no coverage was in effect, the servicing carrier shall reimburse the Plan various specified amounts. Section 54.A.15 provides that if the files and records that support a claim are not located, the Advisory Committee may request that the servicing carrier reverse the claim, including any loss and

expense payments, and remove current and future loss and expense reserves. The language of Section 54.A.15 should be added to the end of Section 54.A.11.

3. The Robert Plan

The quota provisions of Section 8.B.5. should be amended to correspond to the proposal set forth in CAARP Filing No. 03-01, dated January 8, 2003.

Response: CAARP Filing No. 03-01 is the subject of a separate rulemaking. The referenced proposal will be considered in connection with that rulemaking.

The last sentence in Section 11.G.2 [note that the reference should actually be to Section 11.F.2.] currently provides that “No plan or changes thereto shall be implemented until approved by the Commissioner.” This language is not practical and should apply only to companies experiencing difficulty in servicing the business.

Response: Do not adopt this recommendation. The Commissioner has an obligation to ensure that claims are properly handled by a former servicing carrier no longer operating as a servicing carrier. However, to address the concerns of The Robert Plan, add a sentence stating that “Any plan or changes submitted to the Commissioner may be implemented if the Commissioner does not object within 60 days of the Commissioner’s receipt of the plan or changes.”

Section 11.G.5.d. [note that the reference should actually be to Section 11.F.5.d.] should clearly state when it would apply. Additionally, the servicing carrier should have a say in who the claims are assigned to.

Response: Do not adopt this recommendation. The Robert Plan provides no suggestions or criteria regarding when this provision should apply. Section 11.F.5.d. currently provides that if questionable or adverse trends are found, the Committee may consider four options. Discretion must remain with the Committee and Commissioner depending on the facts and circumstances in a particular situation. Other than the fact that the business is still the business of the servicing company, The Robert Plan does not indicate why the servicing carrier should have a say in the company to which claims are assigned. Although there is nothing preventing a servicing carrier from making a recommendation, if the servicing carrier is not properly handling claims, it is the Committee and Commissioner who should determine the best method for claims handling.

The Robert Plan notes that, in the situation of CalEagle (a former servicing carrier), only one claim is pending and the fee for that case alone for one year was over \$1 million, which is the potential return fee.

Response: Please see response to immediately preceding comment.

4. Mercury Insurance Group/California Automobile Insurance Company

Insurers should be permitted to charge a short rate when a policy is cancelled for nonpayment of premium to allow for insurer recoupment of policy costs.

Response: Amend the referenced portion of Section 26.C.2 to refer to Sections 33 and 51 (Cancellations).

Sections 33.A.5. and 51.A.5. provide that if an insured vehicle has been stolen or destroyed, return premium is calculated from the day following the date of loss. However, this does not account for coverage for any non-owned automobile which the insured operates in the interim.

Response: Amend the referenced sections to add at the end of the paragraphs, “or such later date as the insured requests.”

Section 37.A.2.b.3. should be amended to require payment of renewal premium at least 15 days prior to policy expiration on policies requiring financial responsibility filings, as the current regulation does. An insurer must provide the Department of Motor Vehicles 15 days notice prior to canceling a financial responsibility filing. Therefore, a driver potentially has up to 15 days of free coverage.

Response: Do not adopt this recommendation. Mercury does not provide authority for its statement that 15 days advance notice is required, and CAARP recommended the language in the proposed rule.

COMMENTS RECEIVED IN RESPONSE TO APRIL 14, 2004, NOTICE OF AVAILABILITY OF CHANGED TEXT:

In response to the April 14, 2004, Notice, the Department received comments from:

- The California Automobile Assigned Risk Plan (CAARP)
- Mercury Insurance Group/California Automobile Insurance Company

1. California Automobile Assigned Risk Plan (CAARP)

In Section 25.1.2.c, the reference to Uninsured Motorist Property Damage should read \$3,500, not \$5,000.

Response: Accept this recommendation.

In Section 43.A.2.c, the reference to Uninsured Motorist Property Damage should read \$3,500, not \$5,000.

Response: Accept this recommendation.

In Section 12.A.2, the reference should read “Prior to January 2005”, not “January 2005 and Prior”.

Response: Accept this recommendation.

2. Mercury Insurance Group/California Automobile Insurance Company

Mercury submitted comments similar to its earlier comments regarding Section 37.A.2.b.3.

Response: These comments are regarding provisions of the regulations which were unchanged in the April 14, 2004, version. Please see response to earlier comments, above.

COMMENTS RECEIVED IN RESPONSE TO JUNE 8, 2004, NOTICE OF AVAILABILITY OF CHANGED TEXT:

No comments were received.